In Election Petitions Nos. 15, 22 and 23 of 1981 the petitioners also apply to amend the dates of the election as follows:

a) In the constituency of Merotai N. 46 from March 23, 1981 to March 27 and 28, 1981;

b) In the constituency of Kuala Kinabatangan N. 29 from March 23 to 27, 1981 to March 23 to 28, 1981 and

c) In the constituency of Sugut N. 10 from March 23 to 27, 1981 to March 23 to 28, 1981.

I have already held in a separate judgment involving the same parties to these proceedings that the word "election" should be construed narrowly to mean the date when the result of the election was declared by the Returning Officer. According to a Gazette dated April 23, 1981 the result of:

a) Constituency of Merotai N. 46 was announced at Tawau on March 28, 1981;

b) Constituency of Kuala Kinabatangan N. 29 was announced at Sandakan on March 28, 1981 and

c) Constituency of Sugut N. 10 was announced at Sandakan on March 28, 1981.

In view of my judgment that a misdescription of the date of an election would not render the election petition a nullity and that a judge has jurisdiction to order an incorrect date to be amended since the respondent cannot be said to be prejudiced thereby by this error, I would now proceed to deal with the 3 Election Petitions above-mentioned.

As regards Election Petition No. 15 of 1981 the date given has been correctly stated as March 28, 1981 so there is no need to amend it. With regard to Election Petitions Nos. 22 and 23 of 1981 the date of the election in both the constituencies of Kuala Kinabatangan N. 29 and Sugut N. 10 was March 28, 1981 and leave is hereby given to amend both these petitions to March 28, 1981 only instead of from March 23 to 28, 1981.

For the above reasons, leave is hereby granted to amend Election Petitions Nos. 2, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of 1981 in terms of the proposed amendments annexed to the Notices of Motions and underlined in red subject to the deletion of the word "after" in the new paragraph (a) of the statement of particulars. Leave is also given to the petitioners in Election Petitions Nos. 22 and 23 of 1981 to amend the date of the holding of the election in the constituencies of Kuala Kinabatangan N. 29 and Sugut N. 10 to March 28, 1981.

I would hear argument as to costs of these 21 Notices of Motions taken out by the petitioners.

Order accordingly.

Solicitors: *Skrine & Co.; Rithauddeen & Aziz.*

HASSAN BIN MUSTAFFA v. REGISTRAR OF MOTOR VEHICLES SELANGOR

[O.C.J. (Hashim Yeop A. Sani J.) November 16, 1981]

[Kuala Lumpur – Originating Motion No. A. 26 of 1981]

Administrative Law – Mandamus – Order to require Registrar of Vehicles to assign particular registration number to motor vehicle – No legal right to performance of clear legal duty – Motor Vehicles Registration and Licensing) Rules, 1959, rules 4 and 13 – Road Traffic Ordinance, 1958, s. 10.

In this case the applicant was the owner of a motor cycle to which the registration number PN 1 was assigned. The applicant later transferred the motor cycle to Soh Motors and a new registration number was assigned to the motor cycle. The applicant paid a fee of $50/– for the retention of the registration number. Some three years later the applicant requested that a new vehicle be registered with the number "PN 1". This was refused and the applicant thereupon applied for an order of mandamus to direct the Registrar of Motor Vehicles, Selangor to assign the number "PN 1" to the applicant's motor vehicle.

Held: In this case the applicant had no property, franchise or personal right to the registration number "PN 1" and as he had failed to show that he had any legal right to the performance of a clear statutory duty by the Registrar and Inspector of Motor Vehicles Selangor, the application must be dismissed.

Cases referred to:

(1) *Koon Hoi Chow* v. *Pretam Singh* [1972] 1 M.L.J. 180.

CIVIL SUIT.

V. Kumar for the applicant.

Datuk Abu Mansor bin Ali, Senior Federal Counsel, for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: The relief sought by the applicant, Hassan bin Mustaffa, is an order of mandamus directed to the Registrar and Inspector

of Motor Vehicles, Selangor requiring the officer to exercise the powers conferred by sec. 10(1)(a) of the Road Traffic Ordinance 1958 and in particular requiring him to assign Registration Number "PN 1" to a motor vehicle in respect of which the applicant applies to be registered as owner. It is alleged in the statement accompanying that application that the said relief is sought because the Registrar has refused or has failed or neglected to consider the application under the said section 10(1)(a) and that the Registrar had no jurisdiction to so refuse.

The background facts are briefly as follows. On August 25, 1973 Registration No. "PN 1" was assigned to a motor cycle of which the applicant was the owner. On September 24, 1977 the said motor cycle was transferred from the applicant to one Soh Motors and a new Registration Number "BAV 2350" was assigned to the said motor cycle. According to his affidavit the applicant applied (and was allowed) to retain Registration Number "PN 1". He also stated in the same affidavit he was requested and paid the fee of $50/- for the retention of the said Registration number and was issued with a receipt 2506 bearing serial No. 103406. He also emphasised in the same affidavit that no other terms or conditions were imposed on him for the retention of the Registration number.

Some 3 years later on August 22, 1980 the applicant went to the R.I.M.V. office and requested that a new vehicle be registered with the Registration number "PN 1". He was however informed that it could not be done. There were some letters exchanged between the solicitors of the applicant and the R.I.M.V. Selangor as a result. But until the Notice of Motion was taken out on September 22, 1981 the R.I.M.V. Selangor had consistently refused the request of the applicant.

It is the contention of the applicant that the R.I.M.V. Selangor is by virtue of section 10(1) of the Road Traffic Ordinance 1958 by law compelled to grant to the applicant the said Registration Number "PN 1". It is, however, the contention of the respondent that there is no provision in the law which vests on the applicant the property, franchise or personal right over the Registration No. "PN 1" or any other registration number for that matter and there is no duty on the part of the Registrar compelling him to grant the registration number to the applicant. In my opinion the whole question can be disposed of by applying the proper construction of section 10(1) of the Ordinance and thereafter to see whether the applicant can satisfy the requirements of section 44 of the Specific Relief Act 1950.

Let us see first the provision in the law relating to the registration of motor vehicles under the Road Traffic Ordinance 1958. Section 6(1) of the Ordinance provides that no person shall possess or use a motor vehicle unless that vehicle is registered according to the provisions of the Ordinance and rules. Section 10(1)(a) of the Ordinance provides that upon the registration of a motor vehicle the Registrar shall *assign* to the motor vehicle a registration number of such motor vehicle until the motor vehicle is destroyed, broken down or sent permanently out of the states of Malaya whereupon such registration number will be *cancelled.* No registration number assigned to a motor vehicle shall be assigned to any other motor vehicle except under the proviso to section 10(1)(a) of the Ordinance. Under that sub-section the owner of the motor vehicle may apply to the Registrar for approval to have a registration number assigned to a motor vehicle assigned to another motor vehicle in respect of which he is to be registered as owner and which vehicle has not previously been registered.

Rule 4 of the Motor Vehicles (Registration and Licensing) Rules 1959 provides:-

"The fees to be paid on the registration of a motor vehicle shall be in accordance with the scale of fees set out in Items 1, 2, 3, 4, 5 and 6 of the Fourth Schedule hereto;

Provided that -

(a) a motor vehicle which is the property of Government shall be registered without fee;

(b) the Minister may with the agreement of the Minister of Finance in any other case where he considers it in the public interest to do so, waive or reduce such fees.

Rule 13 of the 1959 Rules provides the follows:-

"(1)When any motor vehicle or trailer is broken up, destroyed, or sent permanently out of the States of Malaya the registered owner of such vehicle shall, within seven days of the happening of such event, notify the Registrar with whom the vehicle is registered thereof and deliver to him the registration book issued in relation to such vehicle.

(2)(a) When a motor vehicle has been broken up or permanently exported out of Malaya a Registrar shall cancel the registration of such motor vehicle.

(b) Where a Registrar is unable to trace a motor vehicle or the registered owner thereof, after having taken all reasonable steps to do so, such Registrar may after a period of twelve months from the expiry date of the last

licence issued in respect of such motor vehicle cancel the registration thereof.

(c) A motor vehicle the registration of which has been cancelled under the provisions of paragraph 2(b) of this rule may not be licensed or transferred unless it has been re-registered and shall not be re-registered except on payment of the prescribed fee."

Items 6 and 10 of the Fourth Schedule read as follows:–

(6) On the RE-REGISTRATION of a vehicle of which the registration has been cancelled	$50.00
(10) On the GRANT of an application for transfer of a registration number assigned to a vehicle to another vehicle	$60.00

From the statutory provisions referred to above the following requirements of the law would seem to apply to every dealing with respect to a registration number:–

(1) Only one registration number shall be assigned to one motor vehicle;

(2) A registration number once assigned to a particular motor vehicle shall not be assigned to another motor vehicle except in accordance with the proviso to section 10(1) to the Ordinance;

(3) Once a registration number is assigned to a motor vehicle such registration number shall continue to be the registration number of that particular motor vehicle until one of two events described in (4) happens;

(4)(a) A registration number may be cancelled when the motor vehicle is broken up, destroyed or permanently taken out of Malaya (Rule 13 and Item 6 of Fourth Schedule to 1959 Rules);

(b) The Registrar may permit, subject to such terms and conditions as he may prescribe and upon payment of such prescribed fee, a registration number assigned to a particular motor vehicle to be assigned to another motor vehicle in respect of which the person applying is to be registered as owner and that motor vehicle has not been registered previously (section 10(1)(a) of Ordinance and item 10 of 1959 Rules).

To my mind it is implied quite clearly in the proviso to section 10(1) of the Ordinance that at the time the owner of a motor vehicle applies to transfer the registration number of a motor vehicle to another motor vehicle:–

(a) The person applying must be the owner of the motor vehicle assigned with the registration number; and

(b) The motor vehicle to which the registration number is to be assigned must not have been registered previously, i.e. a new motor vehicle.

It is quite clear that there is no provision for the retention of a registration number. Various fees are prescribed under the Motor Vehicles (Registration and Licensing) Rules 1959 and there is no fee prescribed for the retention of a registration number.

In a letter written by the R.I.N.V. Selangor to the applicant dated November 20, 1980 attached to the affidavit of the applicant, there is mention of the "practice of retaining registration numbers" but para. 3 of the letter would seem to emphasise the requirement that any number so retained should be re-registered" as early as possible.

It is not denied by the R.I.M.V. Selangor that the applicant was issued with a receipt acknowledging payment of a fee for $50/–. But from the affidavits and the evidence there is clearly a conflict as to the purpose of the fee. According to the applicant, the fee was for the retention of registration number "PN 1". According to the Registrar in his affidavit the fee was for the cancellation of the registration number of the motor cycle. In his affidavit the Registrar stated in para. 4 that the applicant paid a fee of $50/– for the cancellation of the registration number "PN 1" assigned to the motor cycle pending the Registrar's approval of the assignment of the same "PN 1" to a new vehicle to be produced by the applicant. He further stated that since the applicant at that time failed to produce the new vehicle the assignment did not take place. He described the fee of $50/– as cancellation of the registration number "PN 1" in respect of the motor cycle and the re-registration of the said motor cycle with the new registration number BAV 2350. The Registrar when cross-examined admitted however that this is *not* a case of cancellation and therefore the fee of $50/– was not the fee chargeable under item 6 of the 4th Schedule of the Rules. He said the fee was collected under rule 7 of the 1959 Rules. But rule 7 specifically refers to section 10(1) of the Ordinance.

The word "cancellation" appears only in rule 13 of the 1959 Rules. That rule clearly applies only in cases where the motor vehicle is broken up, destroyed or permanently taken out of the states of Malaya or where the Registrar is unable to trace the motor vehicle or the registered owner thereof. The receipt which was produced did not show under which item the fee of $50/– was charged. But at the material time the fee under Item 10 of the First Schedule was also $50/– in respect of the granting of an application of a transfer of the registration number to another vehicle which clearly refers to the proviso to section 10(1)(a) of the Ordinance.

To entitle the applicant to the relief sought,

he must satisfy the court that not only that he has property, franchise or personal right over the registration number "PN 1" but that it was incumbent upon the R.I.M.V. Selangor under section 10(1) of the Ordinance to grant to him the registration number "PN 1" when requested to do so on August 2 1980. An order of mandamus applies only where there is a legal right to the performance of a clear legal duty. See also *Koon Hoi Chow* v. *Pretam Singh*[1].

Looking at the provisions of the Road Traffic Ordinance 1958 and the Motor Vehicles (Registration & Licensing) Rules 1959 relating to registration of motor vehicles and the facts of this case it would seem clear to me that there cannot be any property, franchise or personal right of the applicant to the registration number "PN 1". According to the law it is for the Registrar to assign a registration number to a motor vehicle to indicate, among other things, the registration area in which the vehicle is registered. Such mark and number are collectively referred to as the "registration number" under the Ordinance. The proviso to section 10(1)(a) of the Ordinance provides for the exception to the general rule that a registration number assigned to a motor vehicle shall not be assigned to another motor vehicle. The proviso deals with the situation when a reassignment may be permitted. The tenor and language of the proviso to section 10(1)(a) of the Ordinance would seem to attract a narrow construction. I am unable to find in the proviso any power on the part of the Registrar to allow a person to retain a registration number when the person applying has not produced a motor vehicle which has not been previously registered. I agree that the letter of the Registrar dated November 20, 1980 refers to retention but in my opinion the power is merely administrative and not legal. It is surely also against public policy to allow the retention of registration numbers (especially over long periods, in this case 3 years) which would defeat the very object of the statutory provisions relating to registration of motor vehicles which is to provide for systematic and orderly registration.

In this case the fee of $50/– was according to the applicant paid for the retention of registration number "PN 1". According to the Registrar in his affidavit the fee was paid for the cancellation of the said registration number pending the approval for assignment of the said registration number to a new vehicle which was not produced by the applicant. In his cross-examination the Registrar, however, said that the fee was collected under rule 7 of the 1959 Rules which as I pointed out earlier specifically refers to section 10(1) of the Ordinance. In my opinion neither the applicant nor the Registrar has shown that the fee paid was for a purpose provided by law. Since the fee collected could not have been charged under Item 6 nor Item 10 of the Fourth Schedule to the 1959 Rules it was therefore a fee wrongly collected and should be refunded.

Since the applicant has failed to show he has any legal right to the performance of a clear statutory duty by the R.T.M.V. Selangor, the application should be dismissed. Order accordingly.

Due to the peculiar circumstances of this case I shall however make no order as to costs.

Application dismissed.

Solicitors: *Zain & Co.*

ALL MALAYA ESTATES STAFF UNION v. DEVON PROCESSING SDN. BHD. KLANG AND THE INDUSTRIAL COURT

[O.C.J. (Hashim Yeop A. Sani J.) February 23, 1982]

[Kuala Lumpur – Originating Motion No. 13 of 1978]

Administrative Law – Certiorari – Order of Industrial Court remitting reference back to Minister – Industrial Relations Act, 1967, ss. 29 & 30.

Labour Law – Industrial Court – Order of Industrial Court remitting reference back to Minister – Whether Industrial Court had jurisdiction to make such an order – Industrial Relations Act, 1967, ss. 29 & 30.

Industrial Court – Jurisdiction – No jurisdiction to remit reference back to Minister.

In this case the Industrial Court had ruled that a reference which had been referred to it by the Minister should be remitted back to the Minister "for the necessary remedial actions to be taken". The applicant applied for an order of certiorari to quash the ruling.

Held, the order of the Industrial Court was made without jurisdiction and the applicant was entitled to the order of certiorari.

Cases referred to:

(1) *V. Subramaniam & Ors.* v. *Craigielea Estate* [1982] 1 M.L.J. 317.

(2) *Assunta Hospital* v. *Dr. A. Dutt.* [1981] 1 M.L.J. 115.

CIVIL SUIT.

D.P. Xavier for the applicant.